

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIMOTHY LOONEY,

Plaintiff,

-against-

LONGVIEW FUND, L.P. and
ALPHA CAPITAL ANSTALT

Defendant.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>5/6/08</u>

08 Civ. 1069 (CM)

ORDER STAYING PROCEEDINGS AND PLACING CASE ON SUSPENSE CALENDAR

McMahon, J.:

On January 11, 2008, Timothy Looney ("plaintiff") sued in Orange County, California, asserting claims against a third party for specific performance and breach of contract, and against Longview Fund, L.P. and Alpha Capital Anstalt ("defendants") for tortious interference with contract (the "California Action"). Defendants contend that any claims against them by plaintiff must be brought in New York under the forum selection provision of a subordination agreement between plaintiff and defendants. They either have sought or intend to seek dismissal or transfer of the California Action on that basis.

On February 1, 2008, plaintiff filed an action in this Court, seeking a declaration that the subordination agreement does not prevent plaintiff from prosecuting the California Action. The only issue in this case is whether the forum selection clause of the subordination agreement governs the action filed in California by Looney against Longview and Alpha Capital. The California court will have to decide this issue in the first-filed action. There is no reason for this court to consider the matter. The filing of the instant declaratory judgment action wasted plaintiff's resources; there is no need for this court to compound the error by wasting my resources as well.

This matter is stayed in favor of the California Action. The case is to be place on the Court's suspense calendar. When the California court decides whether this issue should be litigated in New York or California, the parties should let me know.

Dated: May 5, 2008

Colleen Nakak
U.S.D.J.

BY ECF TO ALL COUNSEL